

Sexual Assault Prosecution

A Guide for Victims on PEI



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Introduction

This publication provides information about sexual assault prosecution on Prince Edward Island. **Prosecution** is making a legal case against a person charged with a crime. Prosecution happens after the crime is reported and investigated.

This publication is for victims 18 and older. If you are under 18, some of this information will not apply.

This publication is not legal advice, and it does not replace guidance from a lawyer.

This publication is made possible with the generous support of the Prince Edward Island Department of Justice and Public Safety.



About Us

RISE offers free legal support for victims of sexual or intimate partner violence, and workplace sexual harassment. RISE is a program of Community Legal Information. Community Legal Information provides understandable and useful information about the law and the justice system in Prince Edward Island.

Contact RISE

Call or Text

902-218-6143

Website

www.risepei.com

E-mail Address

rise@legalinfopei.ca

Social Media

[@riseprogrampei](https://www.instagram.com/riseprogrampei)

**See page
33 for more
free support
services.**

Getting Support

You are not alone. Supports are available for you.

PEI Rape and Sexual Assault Centre (PEIRSAC)

PEIRSAC offers free counselling services for people who have experienced recent or past sexual assault or childhood sexual abuse.

PEIRSAC's counselling services are:

- Free and confidential.
- For individuals of all genders (over age 16) who have experienced recent or past sexual assault or childhood sexual abuse.
- Provided by professional therapists who are experienced and trained in trauma recovery.
- Not for emergencies. There may be a waiting period. See page 33 for crisis support services.

PEIRSAC Counselling Request Line

902-368-8055

1-888-368-8055

Victim Services

Victim Services is a free and confidential government program that supports you during the criminal justice process. You can access Victim Services at any time, even if charges are not laid or you don't want to report to police. Victim Services can be a connector between you and other parts of the criminal justice system, including the police and the Crown Attorney.

Victim Services gives:

- General information about the criminal justice system.
- Information about your case.
- Safety planning.
- Court preparation.
- Help writing your victim impact statement.
 - A **victim impact statement** is a document that explains how a crime impacted a victim's life. For more information, see page 26.
- Referrals to other community organizations and agencies.
- Emotional support and short-term counselling throughout the process.

Victim Services does not give legal advice.

Victim Services Charlottetown office

902-368-4582

victimservicescharlottetown@gov.pe.ca

Victim Services Summerside office

902-888-8218

victimservicessummerside@gov.pe.ca

People Involved in Prosecution

Prosecution is making a legal case against a person charged with a crime.

The **accused** is the person charged with the crime.

The **defence lawyer** represents the accused.

The **Crown Attorney** is the lawyer who presents the legal case against the accused. The Crown Attorney is responsible for proving the accused's guilt beyond a reasonable doubt. The Crown Attorney is not your lawyer. They represent the public or community interest.

The judge or jury decides the result of the court process.

A **witness** is someone who has information about a crime. Usually, a victim of a sexual assault is a witness. You may be the only witness, or there may be several witnesses.

The words survivor and victim both mean a person harmed by a crime. You may identify with one word over the other. In this publication, we use victim because it is a legal word used in the criminal justice system.

Do I need a lawyer?

As a victim, you don't need to hire a lawyer. A lawyer can't represent you the way they would for another legal matter. The Crown Attorney is responsible for prosecution. Remember, the Crown Attorney is not your lawyer.

But a lawyer can help you with some parts of the process. A lawyer can help you:

- Make decisions.
- Protect your private records (for example, medical, school, and counselling records).
- Prepare to be a witness.

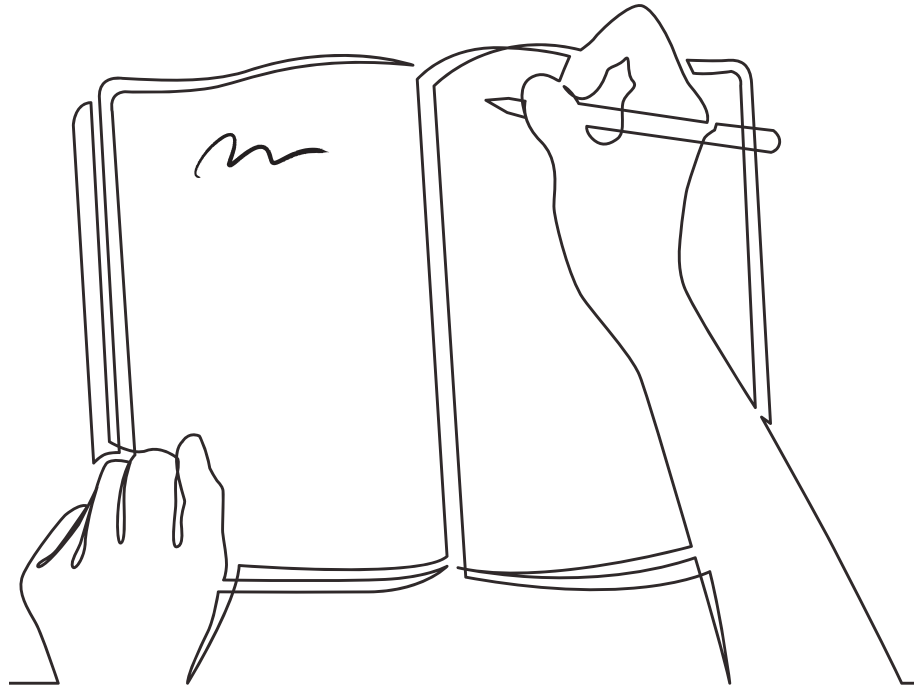
There are options available for free legal support.

- RISE offers referrals for up to four hours of free legal advice. To access this service, you must:
 - Be 16 years of age or older, and
 - Have experienced sexual violence, workplace sexual harassment, or intimate partner violence, and
 - Live on PEI or the incident happened on PEI.
- Victim Services may also be able to help you. Speak with your Victim Services Worker about your concerns.

RISE offers up to 4 hours of free legal advice from a lawyer. Call/text 902-218-6143 for more information.

Who do I ask if I have questions about the case?

You can ask your Victim Services Worker any questions you have about the case. They may arrange a meeting with the Crown Attorney so you can ask them questions too.



What information will the defence have?

The Crown Attorney must give the defence all the information the police collected during the investigation.

The defence lawyer or the Crown Attorney may want to see third-party records they think are relevant to the case. **Third-party records** are records kept by someone other than the Crown Attorney or the defence (for example, medical, school, or counselling records).

- You have the right to consent to the records being released to the defence and used in court by the Crown Attorney or the defence. Sometimes the Crown Attorney will want to use the records as evidence.
- If you don't consent to your records being released, the defence lawyer must make a special application to the court to request access to the records. There will be a separate court hearing to decide if the records are relevant to the case or not. The defence will argue that the information requested is relevant to an issue in the trial or to a witness' ability to testify. You have the right to be represented by a lawyer for this hearing. Your lawyer will argue that the defence should not have access to the records. Victim Services can help you get free legal representation for this hearing. A judge will decide if the records will be released or not.

The defence lawyer may provide questions to witnesses before the case goes to court. Normally, the defence lawyer does not contact you directly. You must answer any questions from the defence lawyer.

What is a publication ban?

A **publication ban** stops your name and identifying information about you and/or others from being published. For example, if there is a publication ban, your name cannot be published on social media, TV, the radio, or in a newspaper.

A publication ban protects your privacy. The Crown Attorney will apply for a publication ban in most sexual assault cases. You can ask the Crown Attorney for more information about publication bans.

What is a subpoena?

A **subpoena** is a court order that gives the date and time you must appear in court. You must obey a subpoena. If you ignore a subpoena, you can be charged. If you are afraid, or you don't want to give evidence in court, talk to Victim Services before the court date. They can work with you. They may accompany you to court if you wish.

Is the accused allowed to contact me?

Usually, no.

An **undertaking** is a type of court order that lists rules the accused must follow until the end of the legal process. An undertaking is also called a release order. An undertaking usually includes a rule that the accused can't contact you.

Tell the police immediately if the accused disobeys the undertaking. The accused may be charged with disobeying the undertaking. They may have to stay in jail until the court proceedings are done.

If conditions include no contact with you, you are also not allowed to contact the accused. You may be charged with a crime if you:

- Contact the accused, or
- Encourage the accused to contact you.

Will the accused be in jail during the court process?

It depends. The accused may be released with an undertaking. The accused may be in jail during the court process.

Types of Offences

In the *Criminal Code of Canada*, there are three types of offences: summary, indictable, and hybrid.

- **Summary offences** are considered less serious crimes. For example, causing a disturbance.
- **Indictable offences** are considered more serious crimes. For example, murder.
- **Hybrid offences** are offences that could be either summary or indictable. The Crown Attorney decides if they will treat a hybrid offence like a summary offence or an indictable offence. Hybrid offences are also called Crown-electable offences. Most sexual assault cases are hybrid offences.

The First Court Appearance

If it is a summary offence:

- The judge reads the charges against the accused.
- The accused enters a plea (guilty or not guilty), or they ask the judge for more time. If the judge gives the accused more time, the accused may enter a plea later.
 - If the accused pleads guilty, the next step is a sentencing hearing.
 - If the accused pleads not guilty, a trial is scheduled.

If it is an indictable offence:

- The judge reads the charges against the accused.
- The court asks the accused how they want to be tried. The accused has three options:
 1. To be tried by a Provincial Court judge, or
 2. To be tried by a Supreme Court judge without a jury, or
 3. To be tried by a Supreme Court judge with a jury.
- If the accused chooses a Provincial Court judge, they will be asked to enter a plea (guilty or not guilty).
 - If the accused pleads guilty, the next step is a sentencing hearing.
 - If the accused pleads not guilty, a trial is scheduled.
- If the accused chooses to be tried by a Supreme Court judge with or without a jury, they will tell the judge if they want to have a preliminary hearing or not.
 - A **preliminary hearing** is a pre-trial hearing to decide if the Crown Attorney has enough evidence against the accused to have a trial. For more information, see page 15.

Do I have to go to the first court appearance?

It is your choice. Your decision to go or not won't impact the case.

If you don't go, Victim Services can tell you what happened. You have the right to know.

Who will be at the court appearances?

Criminal proceedings are usually open to the public. This means that members of the public and the media are allowed to attend, even if there is a publication ban.

What if I have questions about any of the court appearances?

Victim Services can answer your questions or forward them to the Crown Attorney for you.

Preliminary Hearing

A **preliminary hearing** is a pre-trial hearing to decide if the Crown Attorney has enough evidence against the accused to have a trial. A preliminary hearing is also called a preliminary inquiry. Not every court case includes a preliminary hearing.

You may be a witness for a preliminary hearing.

What if the judge dismisses the charge?

The judge may dismiss the charge if they decide there is not enough evidence to go to trial. It is not your fault if the charge is dismissed. It does not mean that the judge, police, and Crown Attorney don't believe you.

Plea Negotiations and Plea Resolutions

A **plea negotiation** is when the Crown Attorney and defence lawyer try to compromise on a guilty plea or a sentence.

A **plea resolution** is when the Crown Attorney and defence lawyer make a compromise on a guilty plea or a sentence. A plea resolution is also called a plea deal.

For example:

- The Crown Attorney may reduce or alter the charges in exchange for a guilty plea.
- The Crown Attorney and the defence lawyer may reach an agreement on what the sentence should be.
- The Crown Attorney and defence lawyer may agree on the facts which are given to the judge to support the charge.

An agreement between the Crown Attorney and the defence lawyer must be approved by the judge or jury.

Will I know if there is a plea negotiation or resolution?

Yes. The Crown Attorney will tell you. The Crown Attorney will take your views into consideration but they don't need you to agree to continue with a plea deal or resolution.

Before the Trial

Before the trial, the Crown Attorney and the defence lawyer prepare their cases. The Crown Attorney asks their witnesses to review their police statements and answer questions about what happened.

If you are a witness, do your best to answer all questions.



RISE offers support navigating the justice system. Call/text **902-218-6143 for more information.**

The Trial

During the trial, the Crown Attorney and the defence lawyer make arguments and give evidence. The Crown Attorney always presents their case first, followed by the defence lawyer.

If you want, you can bring a support person to court with you. The support person can be a Victim Services Worker, a friend, or family member. A support person usually sits in the seating for members of the public.

How does testimony work?

Usually, most of the evidence in a sexual assault trial is testimony.

Testimony is spoken evidence given by a witness in court.

Testifying is giving spoken evidence in court.

Examination is when the person who called the witness (usually the Crown Attorney or defence lawyer) asks the witness questions. These questions must be direct, non-leading questions. Examination is used to get information that supports a case. Examination is also called direct examination.

Cross-examination is when the other side (the Crown Attorney or defence lawyer) asks a witness questions after they have testified in direct examination. These can be leading, “yes” or “no” questions. Questions can be about anything relevant. Cross-examination of a witness is often used to:

- Point out inconsistencies,
- Challenge their testimony, or
- Question their reliability.

Who will testify?

Any witness may testify. You, the accused, and others may testify. Expert witnesses may testify about physical or medical evidence. For example, an expert witness may be a doctor, nurse, or police officer.

Tips for Testifying

- Look at the judge or jury when you answer questions.
- If an objection is called while you are speaking, stop talking. Wait for instructions from the judge.
- Speak slowly, briefly, and clearly.
- Answer all the questions truthfully. If you don't understand a question, ask for clarification.
- If you don't know the answer to a question, it is okay to say, "I don't know."

You may be asked very personal or embarrassing questions, or to share details you have already shared. This can be very hard. Give as much information as you can.

The accused will likely be in the courtroom when you testify. This can be very hard. Remember that the main person you are talking to as a witness is the judge or jury. You don't have to look at the accused.

If the accused doesn't have a lawyer, who will cross-examine me?

The accused might cross-examine you if there isn't a defence lawyer. But you or the Crown Attorney can apply for an order to have a separate lawyer do the cross-examination instead of the accused.

What is a testimonial aid?

A **testimonial aid** is a support that helps you testify. Testimonial aids are not available in all cases. They are mostly used in cases involving child victims or people with cognitive disabilities.

Testimonial aids include:

- Testifying from outside the courtroom through a closed-circuit television.
- Testifying from behind a screen so you can't see the accused.
- Closing the court to the public. This only happens in special circumstances outlined in the *Criminal Code*.

Talk to the Crown Attorney or a Victim Services worker if you want to request a testimonial aid. You must request a testimonial aid in advance. Requesting a testimonial aid does not mean you will get one.



Will I be asked about my sexual history?

Questions about your sexual history are only allowed if the defence makes a specific application, and the judge allows it. You have the right to be present. A judge must consider:

- The accused's right to a fair trial,
- Your right to privacy and personal dignity, and
- The interests of society.

The Crown Attorney will tell you if the defence is allowed to ask questions about previous sexual activity.

The defence can't argue that your sexual history means you:

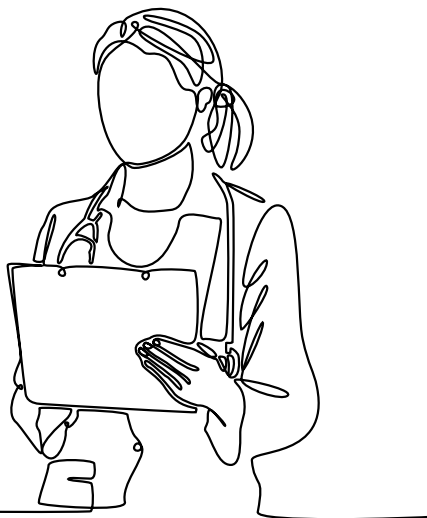
- Were more likely to consent to the sexual activity that is the subject of the charge.
- Are less worthy of being believed.

What other types of evidence will be used?

Video or photographic evidence may be used.

Physical evidence may also be used. For example:

- Bodily fluids and other DNA evidence may be used to prove the accused's identity.
- Physical evidence may be used to prove a sexual act happened.



The Verdict

A **verdict** is a court order that states if the accused is found guilty or not guilty. The judge or jury decides.

In Canada's legal system, a person is innocent until proven guilty. This is a high standard of proof. The Crown Attorney must prove beyond a reasonable doubt that:

- The sexual activity happened, and
- It was the accused person who assaulted you, and
- The sexual activity was not consensual.

If there is a reasonable doubt on any element, the judge or jury will find the accused “not guilty”. This does not mean the sexual assault did not happen. It does not mean you are not believed. It means that the case was not proved beyond a reasonable doubt in the court.

An **acquittal** is a not guilty verdict.

A **conviction** is a guilty verdict.

An **offender** is a person found guilty of a crime in a court process. The accused will be called “the offender” if the court finds them guilty.

Sentencing Hearing

The judge decides what the offender's sentence will be. A sentence may include:

- Jail time.
- Probation.
- Community service.
- Registering on the National Sex Offender Registry.

During the sentencing hearing, evidence will be presented to the court to help the judge decide on the sentence.

A **joint submission** is when the Crown Attorney and the defence make the same sentencing recommendations. A joint submission is sometimes called a joint recommendation.



Victim Impact Statement

A **victim impact statement** (VIS) is a document that explains how a crime impacted a victim's life. A victim impact statement is filed with the court. It usually includes information about:

- Physical injuries.
- Emotional effects, including mental injury.
- Any financial losses you may have suffered.

You may file a victim impact statement if the accused:

- Pleads guilty, or
- Is found guilty.

It is your choice to complete a victim impact statement or not. The judge can use a victim impact statement when deciding a sentence.

Victim Services staff can help you with a victim impact statement. If you are unable to make a victim impact statement, a family member may complete one on your behalf.

You may choose to read your victim impact statement in court or not. The court will have a copy that they can read. If you have concerns about reading your statement aloud in court, talk to your Victim Services worker. There may be other options available.

The media may access a victim impact statement after it is filed with the court. If there is a publication ban, your name and identifying information won't be shared.

Restitution

Restitution is repayment for injury or loss. If the accused pleads guilty or is found guilty, the judge may order them to repay you for costs you paid as a victim. For example, the costs of prescription drugs, counselling, or physiotherapy.

Appeal

Appeal means to have a higher court review a court order. An appeal asks the higher court to review the verdict or sentence. An appeal is not a new trial. No witnesses give evidence.

The Crown Attorney or the defence can make an appeal within 30 days if they think the judge made a mistake in:

- Reasons for deciding a verdict, and/or
- Reasons for deciding a sentence, and/or
- Instructions to the jury.

Criminal Injuries Compensation

In some situations, compensation for some expenses may be recovered through the Criminal Injuries Compensation Fund. To receive compensation from this fund, you must show you suffered injuries or emotional trauma because of the crime.

Ask Victim Services about the eligibility requirements and the application process. You may apply to this fund even if no criminal proceedings are started. Not all expenses and not all crimes are eligible.



Glossary

Accused

A person charged with a crime.

Acquittal

A non-guilty verdict.

Appeal

To have a higher court review a court order.

Conviction

A guilty verdict.

Cross Examination

When the other side (the Crown Attorney or defence lawyer) asks a witness questions after they have testified in direct examination.

Crown Attorney

The lawyer who presents a case against the accused. They represent the public or community interest.

Defence Lawyer

The lawyer for the accused.

Examination

When the Crown Attorney or defence lawyer who called the witness asks the witness questions.

Hybrid offence

A crime that could be either summary or indictable. The Crown Attorney decides if they will treat a hybrid offence like a summary offence or an indictable offence. A hybrid offence is also called a Crown-electable offence.

Indictable offence

A more serious crime (according to the *Criminal Code of Canada*).

Joint submission

When the Crown Attorney and defence lawyer make the same sentencing recommendations. A joint submission is sometimes called a joint recommendation.

Offender

A person found guilty of a crime in a court process.

Plea negotiation

When the Crown Attorney and defence lawyer try to compromise on a guilty plea or a sentence.

Plea resolution

When the Crown Attorney and defence lawyer make a compromise on a guilty plea or a sentence. A plea resolution is also called a plea deal.

Preliminary Hearing

A pre-trial hearing to decide if the Crown Attorney has enough evidence against the accused to have a trial. A preliminary hearing is also called a preliminary inquiry.

Prosecution

Making a legal case against a person charged with a crime.

Publication ban

A court order that stops your name and/or identifying information from being published.

Restitution

Repayment for injury or loss.

Sexual Assault

Committing a sexual act on another person without their consent.

Subpoena

A court order that gives the date and time a person must appear in court.

Summary offence

A less serious crime (according to the *Criminal Code of Canada*).

Survivor

A person harmed by a crime. This is not a legal term.

Testifying

Giving spoken evidence in court.

Testimonial aid

A support that helps a witness testify.

Testimony

Spoken evidence given by a witness in court.

Third-party records

Records kept by someone other than the Crown Attorney or the defence (for example, medical, school, or counselling records).

Undertaking

A court order that lists rules the accused must follow until the court process ends. An undertaking is also called a release order.

Verdict

A court order that states if the accused is found guilty or not guilty.

Victim

A person harmed by a crime. This is a legal term.

Victim impact statement

A document that explains how a crime impacted a victim's life.

Witness

Someone who has information about a crime.

Support Services

Victim Services

- Queens and Kings County 902-368-4582
- Prince County 902-888-8218

PEI Rape and Sexual Assault Centre

- Counselling Request Line 902-368-8055, 1-888-368-8055

Family Violence Prevention Services

- Queen's County Outreach 902-566-1480, 1-800-240-9894
- Eastern PEI Outreach 902-838-0795
- East Prince Outreach 902-436-0517
- West Prince Outreach 902-859-8849
- Men's Services 902-314-3312

Police

- Charlottetown Police 902-629-4172
- Summerside Police 902-432-1201
- Kensington Police 902-836-4499

RCMP

- Charlottetown RCMP 902-368-9300, 902-566-1112 (after hours)
- Summerside RCMP 902-436-9300
- Alberton RCMP 902-853-9300
- Montague RCMP 902-838-9300
- Souris RCMP 902-687-9300

Child Protection

1-877-341-3101, 1-800-341-6868 (after hours)

Canadian Mental Health Association	902-566-3034
The Island Help Line (24/7)	1-800-218-2885
PEI Mental Health and Addictions (24/7)	902-566-3034
Mental Health Walk-in Clinic	
• Montague (16 years +)	902-838-0960
• Charlottetown - Richmond Centre	902-368-4430
• Charlottetown - McGill Centre	902-368-4911
• Summerside - Prince County Hospital	902-888-8180
• Lennox Island Health Centre	902-831-2711
• O’Leary Health Centre	902-853-8670
Emergency Shelters	
• Anderson House (Female, non-binary people, trans men and women)	902-892-0960
• Bedford-MacDonald House (Male)	902-892-9242
• Chief Mary Bernard Memorial Shelter (Female and non-binary people)	1-855-297-2332



Community Legal Information is a registered charity that receives funding from Justice Canada, the PEI Department of Justice and Public Safety, the Law Foundation of PEI, and other sources. Community Legal Information provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information on other legal topics, visit our website at www.legalinfopei.ca, email us at info@legalinfopei.ca, or call us at **902-892-0853** or **1-800-240-9798**. You can also find us on social media.

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www.legalinfopei.ca/donate

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Community Legal Information
@legalinfopei



RISE Program PEI
@riseprogrampei



RISE

Support for Victims of Sexual or Intimate Partner
Violence and Workplace Sexual Harassment



**4 hours of free legal
advice from a lawyer**



**Confidential
legal information**



**Support navigating
the justice system**



**Referrals to other
community services**

Call/text 902-218-6143 | Email rise@legalinfopei.ca

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